



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Herman T. Winston

**File:** B-255550

**Date:** February 25, 1994

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### DIGEST

For about 21 months, an agency paid a special salary rate applicable to positions requiring a certified typist to an employee whose job classification did not qualify for the special rate. The employee inquired about his entitlement to the special rate and received erroneous advice from his personnel office that he was entitled to the special rate. Since his job description and his actual duties included some typing, and the agency issued the employee five Notifications of Personnel Action (SF 50) prior to and during the period erroneously stating his job classification as including typing, the employee had no reason to doubt the explanation given to him by the personnel office. Accordingly, the amount of the overpayments received during the first 20 months, before he received notice of the error, is waived.

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### DECISION

Mr. Herman T. Winston appeals our Claims Group settlement, Z-2925212, Aug. 22, 1993, denying his request for waiver of his debt of \$2,096.42 for erroneous pay he received between December 3, 1989, and March 9, 1991. For the reasons explained below, we waive collection of \$1,956.82, the amount of the overpayment he received before being notified of the error.

### BACKGROUND

On May 21, 1989, Mr. Winston, a civilian Accounting Technician employed by the Army at Fort Meade, Maryland, received a promotion from GS-4, step 8, to GS-5, step 6. Incident to this promotion, his annual pay increased from \$17,350 to \$18,363. The Notification of Personnel Action, Standard Form 50 (SF 50), reflecting this correctly reported the salary increase, but erroneously stated Mr. Winston's new position title as "Accounting Technician (Typing)," the reference to typing being incorrect.

Subsequently, on December 3, 1989, the agency effected a special higher pay rate for employees in job classifications requiring typing, and this increase erroneously was included in Mr. Winston's pay. He received an SF 50 dated December 18, 1989, documenting this pay adjustment which also contained the erroneous position title. Mr. Winston states that he asked his supervisor to ask the Civilian Personnel Office (CPO) why his pay increased on December 3, 1989, and that she did so and was told that the increase reflected the special rate for typing.

In addition to the SF 50s Mr. Winston received documenting his May 1989 promotion and his December 1989 pay increase, he received SF 50s dated July 19, 1989, February 21, 1990, and January 23, 1991, that also included the erroneous "typing" reference in his position title. The last of these SF 50s also included in the remarks section the notation "Special rate under 5 U.S.C. § 5303." None of the other SF 50s had this notation.

The CPO did not detect the error until February 1991, and the correction to Mr. Winston's pay was not effected until the pay period beginning March 10, 1991. However, Mr. Winston states that he was notified by his supervisor of the error on February 11, 1991, and on February 12, 1991, the agency formally notified him of the error by letter which explained that his official job description (Job Number 89277) did not require the skill of a certified typist.

The agency denied Mr. Winston's request for waiver of the resulting debt on the grounds that he should have known he was not eligible for the special rate for typing because that requirement was not in his job description and the SF 50 he received showing the erroneous position title did not note in the remarks section that he was eligible for a special rate of pay. Thus, the agency considered him to be at least partially at fault in the matter. The Claims Group settlement affirmed the waiver denial for the same reasons.

Mr. Winston states that in view of the explanation the CPO provided his supervisor following his inquiry, the reference to typing in the job title on his SF 50s, and his duties, which he states did include typing, he was not aware that he was being erroneously paid until he was notified of the error in February 1991. He argues that this should provide a sufficient basis for granting waiver.

#### OPINION

We may waive claims for overpayment of pay if collection would be against equity and good conscience, provided there is no indication of fraud, misrepresentation, fault, or lack

of good faith on the employee's part. 5 U.S.C. § 5584 (1988). There is no indication of fraud, misrepresentation, or lack of good faith on Mr. Winston's part in this case. As to fault, generally, we will find an employee at least partially at fault when the employee fails to question an unexplained increase in pay. Sheldon H. Avenius, Jr., B-226465, Mar. 23, 1988. However, when an agency has affirmed an employee's pay with a reasonable explanation after an inquiry and the employee has no reason to doubt the agency's response, we have considered the employee to be without fault and granted waiver. Linda L. Hale, B-240393, Jan. 31, 1991, and cases cited therein.

In the present case, although the agency asserts that Mr. Winston should have known of the error in his pay from the absence in the remarks section of his SF 50s of the notation "special rate of pay", we would not expect an employee without any specialized knowledge of pay matters to appreciate the absence of that notation. Compare Fred T. Dick, B-188802, Dec. 30, 1977. Moreover, the December 3, 1989, SF 50, which first showed the erroneous job title, was not an isolated error. Upon his promotion in May 1989 he had received an SF 50 containing the erroneous description, and during the period of the overpayment, Mr. Winston received three other SF 50s with the misstatement, the last of which expressly stated "special rate of pay."

Regarding the job description, we note that, although the position does not require a "qualified typist," it does require "knowledge of operating a typewriter," and the listing of major duties and responsibilities includes "may type a variety of forms, documents, and brief correspondence." In fact, Mr. Winston asserts that during this time period he had a typewriter at his desk and typed reports on a daily basis.

These facts, along with the advice from the personnel office, all support Mr. Winston's position that he reasonably believed he was entitled to the special salary rate for typing, until he was advised of the error on February 11 and 12, 1991. On that basis, we find him to be without fault in the matter.

Accordingly, the Claims Group's settlement is reversed as to the overpayments received for pay periods from December 3, 1989, through the pay period ending February 9, 1991, totaling \$1,956.82. Collection of that amount is hereby waived. However, denial of waiver is sustained for the overpayments Mr. Winston received for the pay periods ending February 23 and March 9, 1991, totaling \$139.60, after he

was notified of the error but before the error was corrected in the payroll system. Mr. Winston could not reasonably expect to retain those amounts.

*for* *Symon E. P. 201*

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